

**EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS DIVISION

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YOLANDA JACKSON, as Administrator )  
of the Estate of KEVIN CURTIS, )  
#Y22898, )  
  ) No. 3:20-cv-00900-DWD  
Plaintiff, )  
  )  
v. )  
  )  
WEXFORD HEALTH SOURCES, INC., )  
EVA LEVEN, MOHAMMED SIDDIQUI, )  
GAIL WALLS, NICKOLAS MITCHELL, )  
CHARLES FRERKING, JEREMY FRERICHS,  
and ANDREW BENNETT, )  
  )  
Defendants. )  
  )

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DEPOSITION UPON ORAL EXAMINATION  
OF  
RYAN HERRINGTON, M.D.

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(Via Videoconference)

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U.S. LEGAL FILE NO.: 6478454

DATE OF PROCEEDINGS: TUESDAY, NOVEMBER 7, 2023

The figure consists of 1000 horizontal bars, each representing a sample. The bars are arranged vertically and have varying widths, indicating the frequency or value of each sample. The x-axis represents the index of the sample, ranging from 0 to 1000. The y-axis represents the frequency or value of the sample.

1           A.     Well, I mean, I just read the reports or reviewed  
2     them. I didn't, like, conscientiously ask myself if I --  
3     you're asking me did I assume that they're accurate?

4 Q. Yes.

5           A.     So I assumed that they were, like, credibly  
6     written, so yes, I did assume they were accurate.

7                 And what I will is that when I was able to  
8     cross-reference charts between Lippert and my assessment, I  
9     found that there was substantial agreement between what I  
10    found and what Lippert found; and so I think if I were to  
11    make an assessment of whether overall I thought Lippert was  
12    accurate, the answer is "yes."

13          Q.     And are you talking about cross-referencing  
14    specific patients' care or what did you cross-reference?

15          A.     Well, there were some patients in the review I  
16    did that were Lippert and some that weren't, and of the  
17    ones that I felt matched Lippert, I thought there was  
18    agreement, substantial agreement between my assessment and  
19    theirs.

20                 I trust my judgment and my methodology, and so  
21    any assumption that I made that Lippert was accurate was  
22    reinforced through the course of my expert work on the  
23    Curtis case that we're discussing today.

24          Q.     And do you have an unredacted version of the  
25    report that identifies the names of the patients in the

2 A. No. Those are all redacted.

3 Q. Were you asked to assume it to be true that the  
4 patients that you reviewed were, in fact, patients that  
5 were identified in the Lippert report?

6 MS. GRADY: Objection; misstates his report.

7 I'll also object to the scope. Again, we're going back to  
8 the things that counsel had more than twelve hours'  
9 opportunity to depose Dr. Herrington about concerning his  
10 original report.

11 (To the witness) You can go ahead, Doctor.

12 (To counsel) And I'll ask that we please  
13 keep this tied to the rebuttal report, given the  
14 substantial additional time that's already been provided  
15 for counsel to depose Dr. Herrington on the first one.

16 Q. (Ms. Kinkaide continuing) I'm on page 6. Do you  
17 need me to repeat the question or have you still got it?

18 A. No; I think I still have it.

19 So I didn't have, like, Social Security numbers  
20 or patient I.D. numbers to cross-reference; but when I saw,  
21 like, almost exact clinical information, like this patient  
22 fell in the bathroom on this day and the age was the same,  
23 that was enough for me to conclude on a more-likely-than-not  
24 basis that it was the same patient.

25 Q. How did you know to even look to cross-reference?

1 A. I just --

2 MS. GRADY: (To the witness) Hold on, Doctor.

3 I'm going to object because I think that  
4 calls for potential communications between counsel and  
5 Dr. Herrington that is expressly protected from disclosure  
6 by Rule 26(b).

9           Q.       (Ms. Kinkaide continuing) Are you taking her  
10      advice?

11 A. Yes.

12 Q. So it sounds like you're refusing to tell me how  
13 it was that you decided to cross-reference the cases that  
14 you reviewed with the cases laid out in the Lippert report.

15 MS. GRADY: That wasn't your question. Is that  
16 the question you're asking?

17 MS. KINKAIDE: That is the question I'm asking.

18 MS. GRADY: Can you restate it so I can decide  
19 whether I need to object.

20 MS. KINKAIDE: Can the court reporter restate it  
21 for me?

22 (The record was read, as requested.)

23 MS. GRADY: I think he did answer that question,  
24 and then I think the question was "How did you even know to  
25 cross-reference them?" That was the question I objected to

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1 and advised Dr. Herrington to not respond to pursuant to  
2 Rule 26(b)(4).

3 MS. KINKAIDE: And if you can just let me speak  
4 for a moment, then I asked the question that she read  
5 initially, "Are you refusing to answer?" And you said, "Is  
6 that the question," and I said, "Yes, that's the question,"  
7 so that is the question I'm posing.

8 (To the reporter) Can you read that  
9 question back, the "Are you refusing to answer..."  
10 question.

11 (The record was read, as follows:  
12 "QUESTION: So it sounds like  
13 you're refusing to tell me how it was  
14 that you decided to cross-reference  
15 the cases that you reviewed with the  
16 cases laid out in the Lippert  
17 report.")

18 MS. GRADY: I'm going to object. That misstates  
19 the question that was posed and the objection that was

20 raised. That question has not been asked.

21 (To the witness) Go ahead.

22 MS. KINKAIDE: That is the question. That's what  
23 I'm asking right now.

24 MS. GRADY: You're asking if he's refusing to  
25 tell you how he decided, but that's not the original

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1 question you asked. Do you want to ask that question? Ask  
2 that question.

3 MS. KINKAIDE: That's what I've been trying to  
4 do. That's what I'm doing. I had her repeat it to ask  
5 that question to the, Doctor.

6 MS. GRADY: I see. Okay, I'm sorry.

7 Q. (Ms. Kinkaide continuing) Have you got it,  
8 Dr. Herington?

9 A. No, I don't have it.

10 MS. KINKAIDE: (To the reporter) Can you read it  
11 one more time for us.

12 (The record was read, as follows:  
13 "QUESTION: So it sounds like  
14 you're refusing to tell me how it was  
15 that you decided to cross-reference

16                   the cases that you reviewed with the  
17                   cases laid out in the Lippert  
18                   report.")

19                   MS. GRADY: Objection; misstates the testimony.

20                   (To the witness) Go ahead, Doctor.

21           A.     So if I'm understanding the question, it's how is  
22           it that I decided to cross-reference patients in this  
23           case-series review I did in Curtis and Lippert.

24           MS. GRADY: (To the witness) Hold on, Doctor.

25           That's actually not the question, and that matters because

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1           the answer to that question is protected. She's asking you  
2           whether you're refusing to testify about how you decided.

3           A.     I guess I just don't understand the question.  
4           I'm not refusing to testify. It's just that Lippert -- you  
5           know, as an expert I want to use as much documentation as I  
6           have access to to generate opinions, and Lippert was  
7           available and then these twelve cases were available, and  
8           so it made sense to me to see if there was information in  
9           Lippert that I could review to potentially assist me in  
10          opinion formulation.

11           Q.     (Ms. Kinkaide continuing) Do you understand that  
12          there were over 600 deaths in the Department of Corrections

13 during the time frame at issue?

14 MS. GRADY: Objection; vague as to time frame.

15 A. Yes.

16 Q. (Ms. Kinkaide continuing) And did you decide to  
17 cross-reference the cases you reviewed with the Lippert  
18 report as part of your methodology? Was that your choice?

19 MS. GRADY: I'm going to object and instruct the  
20 witness not to answer. I think as phrased it calls for  
21 things around creation of draft reports that are protected  
22 from disclosure by 26(b)(4).

23 Q. (Ms. Kinkaide continuing) Are you taking the  
24 advice of counsel?

25 A. Yes.

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1 Q. And you're refusing to answer that question based  
2 on the advice?

3 A. Yes.

4 Q. Were you informed by counsel to cross-reference  
5 specifications in the Lippert report with the cases that  
6 you reviewed in this case?

7 MS. GRADY: Same objection and same advice.

8 (To the witness) Dr. Herrington, that

9 calls expressly for communications this time that are  
10 protected from disclosure by Rule 26(b)(4) because they do  
11 not relate to any of the exceptions set forth in that rule.

12 Q. (Ms. Kinkaide continuing) Are you taking the  
13 advice?

14 A. Yes.

15 Q. And you're refusing to answer based on the  
16 advice?

17 A. Yes.

18 MS. KINKAIDE: Madame Court Reporter, can you  
19 please certify this portion of the transcript.

20 THE REPORTER: I will index all of the questions  
21 not answered in the index on page 3 of the transcript.

22 MS. GRADY: Ms. Kinkaide, can I ask you to avoid  
23 any unnecessary need to involve the court. Can you just  
24 tell me section of 26(b)4(c) you believe that your  
25 questions relate to that would allow the question to be

1 answered?

2 MS. KINKAIDE: We can discuss that on the break  
3 but I have limited time. I've asked it a bunch of times.  
4 It's pretty straightforward.

5 I've also already told you that it's

6 assumptions that were provided to the doctor that these  
7 patients were, in fact, identified in the Lippert report.

8 MS. GRADY: Oh. If you want to ask that, I  
9 agree. You're more than welcome to ask him whether he made  
10 any assumptions or whether counsel told him to make any  
11 assumptions about the identity of any of the individuals  
12 and how they compared to the Lippert report at all. I  
13 agree that that's fair game, so to be clear, my objection  
14 does not cover that.

15 MS. KINKAIDE: I think my question covers the  
16 rest. You're clearly not going to waive the objection and  
17 he's following your advice, so I'm going to have to take it  
18 up later but we can take it up on a break, but I've got  
19 more in the limited time I have left.

20 MS. GRADY: That's fine. As part of the  
21 certification of this question, I'd just like to note that  
22 I've expressly requested to receive that information and I  
23 would be happy to take it up at a break. That would be  
24 fine. I would just like that to be part of the record, as  
25 well.



[REDACTED]

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1 I do just want to basically, like, close this thing on the  
2 privilege issue.

3 So I think I agree with you that if there  
4 are any questions about assumptions that were made,  
5 Dr. Herrington would be required to answer those question,  
6 so I just want to make sure we're on the same page.

7 And the same is true with documents  
8 provided to him I just want to make sure we're on the same  
9 page. It would be true that if we provided him only  
10 portions of documents or directed him to review only  
11 portions of documents, then those questions would be fair  
12 game, too, but I think the questions as asked, we are going  
13 to stand on the objections.

14 Okay. We can go back on. Thanks.

15 Q. (Ms. Kinkaide continuing) So the eleven patients  
16 in addition to Mr. Curtis, those patients' names, were they  
17 provided to you by counsel?

18 A. Yes.

19 Q. Were you ever informed why those patients were  
20 selected?

21 MS. GRADY: I'm going to object that that calls

22 for discussions protected by Rule 26(b)(4).

23 Q. (Ms. Kinkaide continuing) Are you going to  
24 answer the question?

25 A. I'm going to decline to answer that question.

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1 Q. Is that based on her advice?

2 A. Yes.

3 MS. KINKAIDE: (To the reporter) I would ask to  
4 certify that question for the same reasons.

5 Q. So getting back to your report, how did  
6 Mr. Freeman die, in your mind?

7 A. I don't have an opinion on Mr. Freeman.

8 Q. How did Mr. Murray die, in your mind?

9 A. I don't have an opinion on Mr. Murray.

10 Q. On page 10 of your report when you talk about  
11 "highly sensitive testing," what specific testing are you  
12 referring to?

13 A. So "highly-sensitive testing" comes from the  
14 "Comments" -- "highly sensitive liquid chromatography,  
15 quadruple time of" -- I think it's "light mass  
16 spectrometry." My copy is a little fuzzy, but that's where  
17 the "highly sensitive" language came from.

18 Q. What is the error rate for that test?

19 A. It doesn't say.

## Q. Do you know?

21 A. I don't. I focused on the word "highly." That's  
22 the word I looked at -- "high sensitivity."

23 Q. And "high sensitivity" means it's going to pick  
24 up mass particles; that it's not going to miss particle; is  
25 that right?